

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q77969
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number 10/695,817	Filed October 30, 2003
	First Named Inventor Shinobu TANAKA	
	Art Unit 2836	Examiner Carlos David AMAYA
<p>WASHINGTON DC SUGHRUE/265550</p> <p>65565</p> <p>CUSTOMER NUMBER</p>		
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>		
<input checked="" type="checkbox"/> I am an attorney or agent of record. Registration number <u>55,154</u>		 Signature
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<u>February 28, 2008</u> Date		

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q77969

Shinobu TANAKA

Appln. No.: 10/695,817

Group Art Unit: 2836

Confirmation No.: 7177

Examiner: Carlos David AMAYA

Filed: October 30, 2003

For: UNQUALIFIED PERSON DRIVING PREVENTION APPARATUS FOR VEHICLE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated October 30, 2007, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

Claims 1-13 and 15-17 are pending in the application and stand rejected.

Claim Rejections - 35 U.S.C. § 102(b)

The Examiner rejected claims 1-6, 8-13 and 15-17 under § 102(b) as being anticipated by Kito (JP 10082223; "Kito '223") (erroneously indicated as JP 08237734 in the Office Action).

Claim 1 recites, *inter alia*, a control unit for continuously monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected,

wherein the predetermined measure is released when the marker detector again detects
the qualified person marker.

In the response to arguments section of the Final Office Action dated October 30, 2007,
the Examiner replies

[T]he device disclosed by Kito is for a theft prevention device used
in cash transportation vehicles, thus if an authorized person enters
the vehicle and restarts the engine after the vehicle has been
stopped and the lights and the horn are on (after a theft attempt);
operation of the vehicle must be granted to the qualified person
holding the marker detector, since the codes will match (see figure
6.)

(Office Action, p. 8).

In the Advisory Action, the Examiner comments:

One of ordinary skill in the art would appreciated that after
the car is stopped the measures (stop of engine, head lights on, and
horn on) are released when the qualified person holding the marker
opposite the marker detector enters the vehicle again and starts the
process all over again. Insert the ignition key, and the engine rpm
is > 2,000, the timer is activated (S30), and codes match (S40) the
measures (S50) are not engaged/released and normal vehicle
operation is granted, since the codes do MATCH.

(Advisory Action, p.2).

Thus, the Examiner somehow concludes that the operation of the vehicle must be granted
to the qualified person holding the marker detector when he holds the marker detector opposite
the marker detector, after a condition where the fuel injection equipment has already been cut in
step (S40). However, Applicant respectfully submit this position is incorrect. Rather, when the
marker is not detected and the fuel injection equipment has been cut, because the engine speed
cannot again reach 2000 rpm due to a lack of fuel, Kito's marker comparison process cannot
again be engaged.

For instance, Kito's system is disclosed as working as follows:

- (1) crew enters automobile, inserts an ignition key and starts the engine (**S10**) (par. [0023]; Fig. 4);
- (2) after the starting is completed, the engine 15 operates using the fuel injection equipment 13 (par. [0023]);
- (3) next the system detects whether the engine speed (NE) has reached more than a predetermined rotational frequency (i.e., > 2000 rpm) (**S20**) (Fig. 4); and
- (4) in step (**S40**), the IMOBI ECU 16 determines whether an identification code (IMOBI code) from the transponder 11 is received and matches with the IMOBI code set up beforehand - if the codes do not match, actuation of the fuel injection equipment is cut by the IMOBI ECU 16 making the actuation of the engine 2 impossible.

Consequently, because Kito makes the code comparison in step (S40) only after the engine has been started and reached a predetermined rotational frequency in step (S20), no further comparisons of the codes can be made after the fuel injection equipment is cut as the actuation of the engine 2 is prevented. Therefore, the Examiner's position that "operation of the vehicle must be granted to the qualified person holding the marker detector" after once being deactivated, is incorrect. Rather, after Kito cuts the fuel injection equipment, no further comparisons are made.

Moreover, Kito is directed to an antitheft device for special cars, such as a cash transport truck. (par. [001]). Consequently, one of ordinary skill in the art would rationally understand the need to required some special intervention to enable the fuel injection equipment. Finally, the

method expressly disclosed in Kito directly contrasts the Examiner's position. Thus, Applicants respectfully submit the Examiner's position is unsupportable.

Thus, Applicant submits that no portion of Kito discloses that the disablement of the fuel injection is released after the transponder 11 is again detected by the receiver 12. Rather, Kito's method of operation indicates that this cannot possibly occur. Therefore, Kito fails to disclose, "wherein the predetermined measure is released when the marker detector again detects the qualified person marker," as recited in claim 1.

Thus, Applicant submits claim 1 is allowable over Kito for at least this reason. Additionally, Applicant submits that because claim 8 recites a feature similar to the feature set forth above with regard to claim 1, claim 8 is allowable for at least the same reasons set forth above.

Finally, Applicant submits claims 2-6, 9-13 and 15-17 are allowable, at least by virtue of their dependency.

Claim Rejections - 35 U.S.C. § 103(a)

Claim 7 is rejected under § 103(a) as being unpatentable over Kito in view of Thorpe (UK 2,395,331).

Applicant submits that because Thorpe, either taken alone or in combination with Kito, fails to compensate for the above noted deficiencies of Kito as applied to claim 1, claim 7 is allowable at least by virtue of its dependency from claim 1.

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Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

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Respectfully submitted,

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Date: February 28, 2008